

When a person sells tangible personal property which he is not otherwise engaged in the business of selling, the sale is an occasional sale not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a PLR).

November 6, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of August 27, 2002 and our telephone conversation of recent date. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/Laws/regs/part1200/>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither BBB nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Pursuant to Section 1200.110 of the Department of Revenue (DOR) Regulations, BBB, by counsel<sup>1</sup>, hereby requests a private letter ruling concerning the application of the Illinois Retailer's Occupational Tax (ROT) to a prospective purchase of an aircraft, and the application of the use tax (UT) to the subsequent lease of the aircraft to BBB. For the following reasons, BBB believes that neither the ROT nor UT is applicable to these transactions.

1. Facts.

BBB is an Illinois-based limited liability company that holds various assets and engages in management and consulting services in connection with the ownership of these assets. CCC is substantially owned by members of the same family that owns BBB. CCC intends to acquire a airplane. Immediately upon acquisition of this airplane, CCC will lease the airplane<sup>2</sup> to BBB, which will then operate the airplane within the scope of its own business, and the businesses of subsidiaries or related companies. This ownership and leasing structure is intended to provide liability protection for BBB as well as accomplishing several business planning objectives, while complying with the regulations of the Federal Aviation Administration regarding the non-commercial operation of business airplanes. 14 CFR Part 91.

The airplane is now owned and operated by DDD. We are informed that DDD is a transportation services subsidiary of EEE, an energy trading company. DDD has operated this airplane in furtherance of the business of EEE for some years; however, the several airplanes used for this purpose, including the AIRPLANE are now being sold. We have been informed by counsel for EEE that DDD has never been in the

business of selling aircraft at retail, nor has it ever held itself out as being in such a business.

The AIRPLANE is not currently based in Illinois. While we understand that it will undergo a pre-buy inspection at FFF in CITY, Illinois, it is unknown at this time whether the airplane will be delivered in Illinois (although we believe this fact is immaterial). Nevertheless, because BBB and its related companies are based in Illinois, the airplane will undoubtedly spend much of its time flying into and landing in Illinois to pick up and discharge employees and guests of BBB and related companies.

## 2. The ROT and UT.

Illinois has both a sales tax on retail sales of tangible personal property (the ROT) and a use tax (UT) levied on the use of tangible personal property within the state. These taxes are intended to be complementary. If a retail sale of tangible personal property occurs within Illinois, the ROT applies to that sale unless a specific exemption makes the sale free of the tax. If a sale of tangible personal property occurs outside of Illinois no ROT is due; however, if the property is then brought into Illinois by a resident for use within the state, UT is due.<sup>3</sup>

However, because the ROT applies to retail sales of property, there is an exemption for so-called 'occasional sales.' Occasional sales are those made by persons who are not 'retailers' Section 150.201(h) of the DOR Regulations defines retailers as '...every person engaged in the business of selling tangible personal property for use and not for resale in any form.' In addition, a person may be deemed to be a retailer if they hold themselves out to the public as a retailer. Thus, if a person neither makes sales of property at retail or holds themselves out as doing so, that person is not a retailer and any sale of property by such person is considered an occasional sale not subject to ROT.

In addition, because the ROT and UT are intended to be complementary, if a purchase of tangible personal property is not subject to the ROT, any subsequent use of that property is also exempt from UT. Section 150.101(c) DOR Regulations

## 3. Taxation of Leases in Illinois.

Most states consider a lessee of personal property to be the user of such property and impose their use taxes upon such lessee. The tax is ordinarily based on the value of the lease payments and paid over time as such lease payments become due.

In contrast, Illinois considers the lessor of personal property to be the user of such property.<sup>4</sup> Section 150.305(e) DOR Regulations. For this reason, Illinois UT must be paid by a lessor of property on the value of such property, unless the use of the property is exempt from tax.

## 4. Analysis.

DDD is not a retailer because it is not in the business of selling tangible personal property such as aircraft, and it has never held itself out to the public as being in such a business. For this reason, the sale of the AIRPLANE from DDD to CCC should be exempt from the ROT as an occasional sale. Similarly, because CCC is also considered

the user of the AIRPLANE, its use of the airplane (a lease to BBB) should also be exempt from UT because its purchase of the airplane was exempt from the ROT.

5. Miscellaneous.

As already noted, the transaction at issue here has not yet occurred. For this reason, the applicable tax period is unknown at this time and, of course, there is no pending audit or litigation concerning this transaction. Neither BBB nor its counsel has previously sought a ruling from the DOR on this issue or any related issue. Finally, counsel for BBB is not aware of any controlling precedent relating to this issue.

6. Conclusion.

For the reasons stated in this request, BBB believes that the purchase and subsequent lease of the AIRPLANE should be exempt from both the ROT and UT. If you require any additional information to provide us with a ruling to that effect, please let us know. Thank you for your assistance.

## **DEPARTMENT RESPONSE**

Subsequent to your letter we had a clarifying telephone conversation and you provided a copy of the lease you reference in your letter. In these communications you advised that the entity identified in your letter as "CCC" is actually known as AAA.

The binding portion of this response is limited to the issue involving the lease of the airplane from AAA to BBB. We are not able to make a binding determination regarding the occasional sale issue.

We have reviewed the copy of the lease you submitted to our office. We conclude it is a true lease and not a conditional sale. As a result, the tax liability involved would be a Use Tax liability on the lessor's cost price of the plane, unless an exemption can be documented.

As we discussed, we cannot make the ruling you request on the occasional sale exemption because we lack sufficient information about the seller. However, you represented in our conversation that counsel for the seller has advised that the seller does not sell airplanes at retail and does not hold itself out as a retailer of aircraft.

Section 1 of the Retailers' Occupation Tax Act states in part that:

"The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, . . . does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act..." 35 ILCS 120/1.

Because of this statutory provision, persons (as defined in the Retailers' Occupation Tax Act) do not incur Retailers' Occupation Tax liabilities upon gross receipts from such occasional sales and purchasers do not incur Use Tax liabilities. See 86 Ill. Adm. Code 130.110, enclosed.

As a general proposition, the occasional sale exemption is available when a person purchases an item and then, after using the item, disposes of it by selling it. If you could demonstrate that DDD

has not acted as a retailer by selling planes at retail, then the sale of the aircraft by DDD Inc. to AAA would be an occasional sale. To the extent you could demonstrate this, DDD would not incur Retailers' Occupation Tax liability and AAA would not incur Illinois Use Tax liability upon the sale of the plane from DDD to AAA.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz  
Associate Counsel

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<sup>1</sup> A copy of Form IL-2848 is enclosed.

<sup>2</sup> This lease will be an operating lease and not a capital lease.

<sup>3</sup> A non-resident of Illinois is not subject to UT on property purchased outside Illinois and subsequently brought into the state if more than 90 days has elapsed since the purchase.

<sup>4</sup> This assumes that the lease is a 'true lease' rather than a conditional sale.